XII-189 (Jail) C J.P.R.-9-94 Cri A 1122/97 CF0000061616 (2)

APPEAL OF PRISONER

Division Bench (Criminal)

No डब्ल्यू-सी-नम्बर-141/55 Name इतवारसाय

Father's name प्रेमसाय,

Residence मु॰ कोसामार, थाना-कटघोरा- Age 30 वर्ष,

जिला-बिलासपुर (म॰प्र॰)

Sentenced to आजीवनकारावास — on 15-5-97

Under Section 302 भादवि॰ by - विशेष एवं तृतीय सत्र न्यायाधीश-बिलासपुर, श्री-एस॰ ए॰ खान.

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven d[illegible] he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement —

2 Date on which copy received 15-5-1997

3 Date on which Appeal sent No 39/171 आ॰अ॰को॰/97 दि॰ 26-5-97

4 Whether the prisoner wishes to be represented or not हाँ

No सत्र प्रकरण क्र॰ 362/94 Name इतवारसाय पि॰ प्रेमसाय,

Confined in जिला Jail बिलासपुर (म॰प्र॰)

No. 39/171 Dated 26-5-1997

Forwarded to the रजिस्ट्रार, उच्च न्यायालय मध्यप्रदेश जबलपुर,

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent
Jail
26/5/97

Date of receipt in Office

Date of receipt of record to accompany the Memo of Appeal to the Appellate court

No Dated 199

Forwarded to the

Date of receipt in Appellate court

(P. T. O.)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.App. 1122/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

12-4-2006

Mrs. Kiran Jain, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Ravindra Agarwal, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J:-

By this appeal under Section 374 (2) of the Cr.P.C. appellant-Itwar Sai has questioned the legality of judgment of conviction and order of sentence dated 15th May, 1997 passed by learned Additional Sessions Judge (Special Court), Bilaspur, in Sessions Trial No.362/94, whereby learned Additional Sessions Judge convicted the accused/appellant under Section 302 of the I.P.C. for causing death of Sukhnandan Singh and sentenced him to undergo imprisonment for life. However, he acquitted other accused persons namely Arjun, Jawahar & Shahas Ram.

The prosecution case, in brief, is that on 19-8-1994 Santram lodged the report (Ex.P-5) in the Police Station Katghora to the effect that on 18.8.1994, he along with his father Sukhnandan Singh was working in their agricultural filed near the village. At about 11.00 a.m., he went for taking lunch and after taking lunch when at about 12 noon he was going for grazing the goat, he heard the screams of his sister Kailasho Bai (PW-1) that 'rush-rush his father is being

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आदेश पत्रक

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

beaten'. On hearing the screams, he reached the spot and saw that Itwar Sai & three other persons were running away after assaulting his father, there was injury on the head of his father, blood was oozing out of it and his father was dead. One accused person rushed towards him to assault him but he could escape. Receiving this report, the Station House Officer, Police Station Katghora registered Cr.No.159/94 for commission of offence under Section 302/34 of IPC, left for scene of occurrence and after giving notice to the Panchas, prepared the Panchnama (Ex.P-7) of body of Sukhnandan Singh. He took into possession the blood stained soil and plain soil from the place of occurrence under Ex.P-8. The dead body was sent for post-mortem examination to Government Hospital, Katghora, where Dr. H.D. Dahire (PW-6) conducted the post-mortem and prepared the post-mortem report Ex.P-9 in which he opined that cause of death was shock due to haemorrhage as a result of head injury. Clothes of deceased were taking into possession under Ex.P-17, one bamboo lathi was taking into possession under Ex.P-1 from accused Arjun Singh, one bamboo lathi was taken into possession under Ex.P-2 from accused Itwar. Recovered articles were sent for chemical examination to Assistant Chemical Inspector, Forensic Science Laboratory, Bilaspur.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, Katghora, who in turn committed the case to the Sessions Judge, Bilaspur, from where, learned Additional Sessions Judge (Special Court), Bilaspur received the case on transfer for trial.

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The prosecution in order to establish charge against the accused persons examined seven witnesses. Statements of accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the prosecution evidence appearing against them.

Learned Additional Sessions Judge, after hearing the arguments of respective counsel convicted and sentenced the accused/appellant herein as mentioned in para 1 of this judgment, however, he acquitted accused Arjun, Jawahar & Shahas Ram.

We have heard learned counsel for the parties.

Homicidal death of Sukhnandan Singh is not in dispute.

As far as involvement of the accused/appellant herein in commission of crime in question is concerned, PW-1 Kailaso Bai-daughter of deceased, who witnessed the crime, has stated in her evidence that at the time of crime she was at her residence, at about 12 noon she heard the screams of her father, on hearing the screams she went towards the agricultural field where her father was working and saw that accused Itwara and other accused persons were assaulting her father with lathi, as a result of which he received injuries on his legs, hands and head. At that time, her brother was grazing the goat in the forest, therefore, she went there and informed her brother. Her brother came and saw the body of her father. PW-3 Santram, brother of this witness and son of deceased, has stated that when he was in the forest he was informed by his sister Kailasho Bai, on which he went to the place of occurrence and saw his father in injured condition, who was already dead. He lodged the report Ex.P-5

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

in the police station. The defence has not been able to elicit any circumstance, which makes the evidence of Kailasho Bai (PW-1) unreliable or untrustworthy. The weapon of offence i.e. bamboo lathi was also recovered from the possession of accused/appellant herein and as per medical report injury was also found on the head and leg. Therefore, we are of the considered opinion that involvement of the accused/appellant in crime in question is established beyond reasonable doubt and the trial court has not committed any illegality or infirmity in convicting the accused/appellant herein.

Learned counsel for the accused/appellant argued that from the evidence of PW-1 Kailasho Bai it is not clear that who caused the fatal injury which resulted into death of Sukhnandan Singh. She further stated that two accused persons have already been acquitted, there is no specific evidence that the accused/appellant herein was the only person responsible for fatal injury, which resulted into death of deceased and there is also nothing on record to show that the accused/appellant herein assaulted the deceased with the intention to cause death of deceased, as such in the given circumstances, the benefit of Section 304 Part-II must go to the accused/appellant herein.

On the other hand, learned Additional Public Prosecutor for the State supported the judgment of the trial Court.

In order to appreciate the arguments advanced by learned counsel for the accused/appellant, we have scanned the evidence of Kailasho Bai (PW-1) and we find some substance in the arguments of learned counsel for accused/appellant. From the evidence of Kailasho Bai (PW-1) it appears that

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

three persons assaulted out of which two have already been acquitted and there is nothing on record to show that accused/appellant herein assaulted the deceased with the intention to cause his death and the fatal injury was caused by him only. In the circumstances, we are of the considered opinion that the offence against the accused/appellant does not travel beyond Section 304 Part-II of the I.P.C.

In the result, the appeal partly succeeds and the same is partly allowed. Conviction and sentence awarded to appellant Itwar Sai under Section 302/34 of the I.P.C. are set aside and he is acquitted of charge under Section 302/34 of the I.P.C., instead thereof, he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for 10 years. Accused Itwar Sai is in custody since 22-8-1994, which has not been disputed by learned Additional Public Prosecutor, thereby, he has already served out the sentence imposed on him, therefore, he be set at liberty forthwith, if not required in any other case.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Roshan/-

19.4.06
20.4.06

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